

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13664 of 2019

State of Odisha and others

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Guru Charan Samal and others

.....

Opposite Parties

Mr. S. Mohanty, Adv.

Mr. B. Baug, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

12.04.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned counsel for the State-petitioners; Mr. S. Mohanty, learned counsel appearing for opposite party no.1 and Mr. B. Baug, learned counsel for opposite party no.3.

3. The State-petitioners have filed this writ petition assailing the order dated 27.04.2017 passed in O.A. No. 1130 of 2014, by which the State Administrative Tribunal, Principal Bench, Bhubaneswar by observing that opposite party no.1 is entitled to pro rata pension as per Rule-43 of the OCS (Pension) Rules, 1992, directed the State-petitioners to take appropriate action for sanction of pro rata pension in favour of opposite party no.1 within a period of four months from the date of receipt of copy of the order.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for State-petitioners contended that opposite party no.1 was appointed as Junior Soil Conservation Assistant on 06.11.1964 and while he was continuing in service, in response to the advertisement of the Agro Industries Corporation, (Govt. of Odisha undertaking) for the post of Field Assistant, he submitted his application and was selected. Accordingly, he was relieved

from the post on 21.05.1976 and joined on 25.05.1976 in the Agro Industry Corporation. It is contended that the claim of the opposite party no.1 is that since he has rendered more than ten years of qualifying service, he is entitled to pro rata pension under OCS (Pension) Rules, 1992. The same having not been extended, opposite party no.1 approached the tribunal by filing O.A. No. 1130 of 2014 and, on consideration of the same, the tribunal vide order dated 27.04.2017 disposed of the said original application by directing the State-petitioners to grant pro rata pension to opposite party no.1. But while so doing, the tribunal has not applied its mind in proper perspective to Rule-43 of the OCS (Pension) Rules, 1992, basing upon which the benefit has been extended in favour of opposite party no.1, and, as such, Rule-43 is very clear that a Government servant, who has been permitted to be absorbed in a service or post in or under a Corporation of Public Undertaking wholly or substantially owned or controlled by the government or an undertaking jointly controlled by the Government and Central Government or by the Government or any other State Government to be in the public interest, be deemed to have retired from service from the date of such absorption. It is stated that since no permission was accorded by the Government enabling opposite party no.1 to join in the post, he is not entitled to pro rata pension in terms of Rule-43 of the OCS (Pension) Rules, 1992.

5. Mr. S. Mohanty, learned counsel appearing for opposite party no.1 contended that admittedly opposite party no.1 was continuing as a government servant and has completed more than ten years. Therefore, opposite party no.1 is entitled to get the benefit of pro rata pension as due and admissible to him in accordance with law. So far as permission part is concerned, it is

contended that opposite party no.1 applied for the post of Field Assistant in the Agro Industry, pursuant to advertisement, after getting due permission from the authority concerned and he was selected and appointed in the Corporation. Therefore, once the authority permitted him to appear in the examination, that itself indicates that due permission was granted in favour of opposite party no.1 to appear in the selection process conducted by the Corporation. Therefore, for the period he has rendered service in Government, he is entitled to get the benefit of pro rata pension. As such, the tribunal has not committed any error in passing the order impugned so as to warrant interference with the same.

6. Mr. B. Baug, learned counsel for opposite party no.3 contended that pursuant to advertisement since opposite party no.1 joined in the service of Agro Industries Corporation, which is a Govt. of Orissa undertaking and, as such, if the petitioner rendered service under the Government for more than 10 years, the benefit of pension on pro rata basis cannot be denied to him.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that admittedly opposite party no.1 while rendering service under the State Government as Junior Soil Conservation Assistant on 06.11.1964, in response to the advertisement of the Agro Industries Corporation (Govt. of Odisha undertaking) for the post of Field Assistant, submitted his application and was selected. Accordingly, he was relieved from the post on 21.05.1976 and joined on 25.05.1976 in the Agro Industry Corporation. Therefore, opposite party no.1, having rendered more than 10 years of qualifying service, is entitled to get pro rata pension as per OCS (Pension) Rules 1992. The same having been denied to him, opposite party no.1 submitted pension papers, which were duly forwarded to the A.G. (A&E), Odisha,

but the same were returned to sanction at the end of the Government. Though opposite party no.1 made several representations, but the same were not considered, whereas similarly situated person, namely, Choudhury Gyandev Das, who had approached this Court by filing W.P.(C) No.15439 of 2010, has got the benefit. Thereby, the tribunal taking into consideration all the aspects and by observing that the OCS Pension Rules, 1992 having been framed under proviso to Article 309 of the Constitution, the proviso to Rule-43(1) clearly envisages that a Government servant who is absorbed in a Corporation of public undertaking controlled by the Government or an undertaking jointly controlled by the State Government or any other State Government to be in the public interest, be deemed to have retired from government service from the date of such absorption, allowed the benefit of pension on pro rata basis in favour of opposite party no.1.

8. In such view of the matter, this Court is of the considered view that the tribunal has not committed any error apparent on the face of record so as to cause interference with the same.

9. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Puspa

(SAVITRI RATHO)
JUDGE